

Initial Statement of Reasons
Adoption of Proposed Amendments to
California Code of Regulations, Title 18, Section 462.040,
Change in Ownership - Joint Tenancies

SPECIFIC PURPOSE AND NECESSITY

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of "change in ownership" in Revenue and Taxation Code (RTC) section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the State Board of Equalization (Board) is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to transactions that create, transfer, or terminate joint tenancy interests.

In particular, Property Tax Rule 462.040 implements, interprets, and makes specific RTC section 65, subdivisions (a) through (d), which provide that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining

the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that “Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.”

In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of RTC section 62, subdivision (p), regarding transfers between registered domestic partners and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the RTC to provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

Specific Purpose, Necessity, and Benefits of the Proposed Amendments

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of RTC § 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA’s requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

The Board considered the CAA's petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA's requested amendments. Therefore, Board staff met with interested parties on August 27, 2012, and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently prepared Formal Issue Paper 13-004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

In the formal issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civ. Code, § 683.2, subd. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Address county assessors' additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Provide in subdivision (b)(1) that "spouse" includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with RTC section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of RTC section 62.3, which provide that "change in ownership" does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are "original transferors" or "other than original transferors"; and
- Make other minor grammatical changes, such as deleting the word "subsequent" from example 3, and replacing the "%" symbol with the word "percent" and consistently using quotation marks around the phrases "original transferor" and "other than original transferor" throughout the rule.

The recommendations were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

At the conclusion of the March 12, 2013, Property Tax Committee meeting, the Board agreed with staff's recommendations and unanimously voted to propose the adoption of staff's recommended amendments to Property Tax Rule 462.040 because the Board determined that the amendments were reasonably necessary to:

- Make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Make the rule consistent with RTC section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with RTC section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

The Board also determined that the proposed amendments to Property Tax Rule 462.040 are reasonably necessary to specifically address the CAA's petition, the problems created by the rule's lack of clear guidance regarding the need for all transferor(s) to be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create original transferor status, the problems created by the rule's lack of guidance regarding RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5, and eliminate any confusion that may have been created by the rule's current examples.

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties by clarifying the types of transfers that create "original transferor" status within the meaning of RTC section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

The proposed amendments to Property Tax Rule 462.040 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rule 462.040.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 13-004, the attachments to the issue paper, and the comments made during the Board's discussion of the issue paper during its March 12, 2013, Property Tax Committee meeting in deciding to propose the amendments to Property Tax Rule 462.040 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rule 462.040 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Property Tax Rule 462.040 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(6) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The proposed amendments to Property Tax Rule 462.040 make the rule consistent with and clarify current law regarding the affect of transfers that create joint tenancies, transfers of interests in property held in joint tenancy, and transfers that terminate joint tenancies for property tax purposes, and make minor grammatical changes. As such, the Board anticipates that the proposed amendments will provide more clarity regarding current law and the affect of such transfers, but the Board does not anticipate that the proposed amendments will have a significant effect on the state's economy. Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

In addition, Property Tax Rule 462.040 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Rule 462.040 will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant adverse economic impact on business.

The proposed amendments may affect small business.